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PILLSBURY WINTHROP SHAW PITTMAN, LLP			EXAMINER	
P.O. BOX 10500			SLITERIS, JOSELYNN Y	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/527,667	Applicant(s) WERNER ET AL.
	Examiner JOSELYNN Y. SLITERIS	Art Unit 3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 July 2008.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-11 and 13-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-11,13-26,28-30,32,33,35,36,38 and 39 is/are rejected.
- 7) Claim(s) 27,31,34 and 37 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 11 March 2005 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftperson's Patent Drawing Review (PTO-548)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No./Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No./Mail Date _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

Acknowledgement

1. Examiner acknowledges receipt of applicant's Amendment to the Claims and Drawings (filed 7/1/08).

Drawings

2. The proposed drawing corrections to Figs. 1-3 filed 7/1/08 have been approved and entered.
3. However, the drawings are still objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "a portion of a vehicle power train extending through the central opening into a hollow interior of the center structure" in claims 27 & 31; and "a portion of a vehicle power train extending through the central opening into a hollow portion of the center structure" in claims 34 & 37 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claims 20, 23, 24, 26, 28, 30, 32, 33, and 35, 36, 38, and 39 are objected to because they are replete with informalities. Here are a few examples: in claim 20 line 6, "vehicle," should be --vehicle--; in claim 23 line 2, "each said flange ... form" should be --each of said flanges ... forms--; in claim 24 line 2, "each said flange" should be -- each of said flanges--; in claims 28, 30, 32, 33, 35, 36, 38 & 39 lines 1-2, "each said ...structure" should be --each of said ... structures--; . Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 13 remains dependent on claim 12, which is now canceled. Therefore, claim 13 is rendered indefinite. However, for examination purposes, examiner is interpreting claim 13 to be dependent on claim 11.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1-9, 11, 14-20, 22, 24-26, 28-30, 32, 33, 35, 36, 38, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viduya et al. (U.S. Patent 6,408,974).

10. Regarding claims 1, 2, 4-6, 22, and 28-30, Viduya discloses a cross member 16 as in the present invention (Figs. 1 & 2), comprising:

an elongated, center structure 16 having a first end, a mid portion, and a second end;

a first member 32 rigidly connected to said first end of said center structure; and

a second member 32 rigidly connected to said second end of said center

structure,

each of said first and second members having a respective integral attachment structure for attaching a respective motor vehicle element 12a, 12b associated with a respective wheel of a motor vehicle (see annotations in Figs. 2 attached),

each of said first and second ends of said center structure including a flange 28 extending from said center structure and constructed and arranged to rigidify and strengthen said center structure while providing a surface that can be placed against a side surface of a respective member of said first and second members 32, 32 for attachment with said respective member of said first and second members;

wherein said center structure is constructed as a one-piece, unitary structure;

wherein said center structure has a U-shaped cross section;

wherein each of said members includes a flange (see annotations in Fig. 2 attached) and wherein each of said members is rigidly connected to said center structure by rigidly connecting said flange of each member to said center structure;

wherein each of said members is rigidly connected to said center structure using fasteners 31;

wherein each of said flanges 28 of said first and second ends of said center structure extends transversely relative to said elongated center structure;

wherein each of said integral attachment structures comprises an integral attachment structure for attaching a respective wheel control arm to the cross member (indirectly via 12a, 12b);

in combination with first and second vehicle wheel control arms, each control arm being attached to a respective one of the integral attachment structures (indirectly via 12a, 12b);

wherein each of said integral attachment structures comprises an integral attachment structure for attaching a wheel suspension assembly to the cross member (indirectly via 12a, 12b).

With respect to the center structure being formed as a non-cast structure, examiner notes that the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. However, examiner notes that the center structure of Viduya is nevertheless formed as a non-cast structure.

With respect to the first and second "castings", examiner notes that this limitation does not serve to distinguish in an apparatus claim. Nevertheless, it is the examiner's position that castings are extremely old and well known in the art and as such, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the members 32, 32 by casting.

11. Regarding claim 3, Viduya discloses the claimed invention except for the center structure comprising a metallic material that is selected from the group consisting of steel and aluminum. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the center structure comprise a metallic material that is selected from the group consisting of steel and aluminum to provide suitable strength, since it has been held to be within the general skill of a worker

in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

12. Regarding claims 7-9, Viduya discloses the claimed invention except for the rigid connection being provided by rivets, an adhesive, and/or by welding. However, it is the examiner's position that rigidly connecting two elements by rivets, an adhesive, and/or by welding is extremely old and well known in the art and as such, it would have been an obvious matter of design choice to use any one of the rivets, adhesive, and/or weld to connect two elements, since applicant has not disclosed that the rivets, adhesive, and/or weld solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with bolts and/or screws.

13. Regarding claims 11, 24, 32, and 33, Viduya discloses a frame as in the present invention (Figs. 1 & 2), comprising:

first and second side frame members 12a, 12b; and

a cross member 16 coupled to and extending between said first and second side frame members, said cross member having

an elongated, center structure 16 having a first end, a mid portion, and a second end;

a first member 32 rigidly connected to said first end of said center structure, and

a second member 32 rigidly connected to said second end of said center structure,

said first and second members being attached to said first and second side frame members 12a, 12b, respectively, and

each of said first and second members having a respective integral attachment structure for attaching a respective motor vehicle element 12a, 12b associated with a respective wheel of a motor vehicle (see annotations in Fig. 2 attached), and

each of said first and second ends of said center structure including a flange 28 extending from said center structure and constructed and arranged to rigidify and strengthen said center structure while providing a surface that can be placed against a side surface of a respective member 32 of said first and second members 32, 32 for attachment with said respective member of said first and second members;

wherein each of said flanges of said first and second ends of said center structure extends transversely relative to said elongated center structure;

wherein each of said integral attachment structures comprises an integral attachment structure for attaching a respective wheel control arm to the cross member (indirectly via 12a, 12b);

wherein each of said integral attachment structures comprises an integral attachment structure for attaching a wheel suspension assembly to the cross member (indirectly via 12a, 12b).

With respect to the center structure being formed as a one-piece, unitary, non-cast structure, examiner notes that the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been

given patentable weight. However, examiner notes that the center structure of Viduya is nevertheless formed as a one-piece, unitary, non-cast structure.

With respect to the first and second “castings”, examiner notes that this limitation does not serve to distinguish in an apparatus claim. Nevertheless, it is the examiner’s position that castings are extremely old and well known in the art and as such, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the members 32, 32 by casting.

14. Regarding claims 14, 16, 18, 19, 25, 35, and 36, Viduya discloses a method of forming a cross member 16 as in the present invention (Figs. 1 & 2), comprising:

forming an elongated, center structure 16 such that the center structure has a first end, a mid portion, and a second end;

forming first and second structures 32, 32, each structure having a respective integral attachment structure for attaching a respective motor vehicle element 12a, 12b associated with a respective wheel of a motor vehicle (see annotations in Fig. 2 attached); and

connecting the first and second structures to the first and second ends, respectively, of the center structure to form a rigid connection between the center structure and the first and second structures;

wherein each of the first and second ends of the center structure are formed to include a flange 28 extending from the center structure and constructed and arranged to

rigidify and strengthen the center structure while providing a surface that is placed against a side surface of a respective structure of the first and second structures for the connection with the respective structure of the first and second structures;

wherein the connecting of the first and second structures 32, 32 to the center structure 16 includes attaching respective flanges (see annotations in Fig. 2 attached) of the first and second structures to the center structure;

wherein the connecting is carried out by attaching fasteners 31 between each of the structures 32 and the center structure 16;

wherein the center structure is formed as a one-piece, unitary structure;

wherein connecting each of the first and second structures to the first and second ends includes moving one of the first structure and the first end in a fore-aft/up-down slip plane prior to forming a rigid connection to assure dimensional accuracy;

wherein each of said integral attachment structures comprises an integral attachment structure for attaching a respective wheel control arm to the cross member (indirectly via 12a, 12b);

wherein each of said integral attachment structures comprises an integral attachment structure for attaching a wheel suspension assembly to the cross member (indirectly via 12a, 12b).

While Viduya does not specifically disclose forming the elongated, center structure by a method other than casting, i.e. stamping (as disclosed in the applicant's disclosure), it is the examiner's position that stamping is extremely old and well known in the art and as such, it would have been obvious to one having ordinary skill in the art

at the time the invention was made to form the elongated, center structure 16 by stamping.

While Viduya does not specifically disclose forming the first and second structures by casting, it is the examiner's position that casting is extremely old and well known in the art and as such, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the structures 32, 32 by casting.

15. Regarding claim 15, Viduya discloses the claimed invention except for the center structure being formed by stamping. However, it is the examiner's position that stamping is extremely old and well known in the art and as such, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the center structure by stamping.

16. Regarding claim 17, Viduya discloses the claimed invention except for the connecting being carried out by welding. However, it is the examiner's position that connecting by welding is extremely old and well known in the art and as such, it would have been an obvious matter of design choice to connect by welding, since applicant has not disclosed that welding solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with bolts and/or screws.

17. Regarding claims 20, 26, 38, and 39, Viduya discloses a method of forming a motor vehicle frame as in the present invention (Figs. 1 & 2), comprising:

forming an elongated, center structure 16 such that the center structure has a first end, a mid portion, and a second end;

forming first and second structures 32, 32, each structure having a respective integral attachment structure for attaching a respective motor vehicle element 12a, 12b associated with a respective wheel of a motor vehicle, (see annotations in Fig. 2 attached);

connecting the first and second structures to the first and second ends, respectively, of the center structure to form a rigid connection between the center structure and the first and second structures, wherein each of the first and second ends of the center structure are formed to include a flange 28 extending from the center structure and constructed and arranged to rigidify and strengthen the center structure while providing a surface that is placed against a side surface of a respective structure of the first and second structures for the connection with the respective structure of the first and second structures;

connecting the first structure 32 to a first motor vehicle frame member 12a; and connecting the second structure 32 to a second motor vehicle frame member 12b;

wherein connecting each of the first and second structures to the first and second ends includes moving one of the first structure and the first end in a fore-aft/up-down slip plane prior to forming a rigid connection to assure dimensional accuracy;

wherein each of said integral attachment structures comprises an integral attachment structure for attaching a respective wheel control arm to the cross member (indirectly via 12a, 12b);

wherein each of said integral attachment structures comprises an integral attachment structure for attaching a wheel suspension assembly to the cross member (indirectly via 12a, 12b).

While Viduya does not specifically disclose forming the elongated, center structure by a method other than casting, i.e. stamping (as disclosed in the applicant's disclosure), it is the examiner's position that stamping is extremely old and well known in the art and as such, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the elongated, center structure 16 by stamping.

While Viduya does not specifically disclose forming the first and second structures by casting, it is the examiner's position that casting is extremely old and well known in the art and as such, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the structures 32, 32 by casting.

18. Claims 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viduya et al. (U.S. Patent 6,408,974) in view of Dostert et al. (U.S. Patent 5,997,038).

19. Regarding claims 10 and 13, Viduya discloses the claimed invention except for a cover mounted beneath and rigidly secured to the center structure to close the U-shaped cross-section of the center structure. Dostert discloses that it is known in the art to provide a cover 170 mounted beneath and rigidly secured to a structure 22 to close the U-shaped cross-section of the structure. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the

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center structure of Viduya with the cover of Dostert, in order to close the U-shaped cross-section of the center structure.

20. Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viduya et al. (U.S. Patent 6,408,974) in view of Huang et al. (U.S. Patent 6,783,157).

21. Regarding claims 21 and 23, Viduya discloses the claimed invention except for each of said flanges of said first and second ends of said center structure forming part of a single, continuous flange that extends along the entire perimeter of said center structure. Huang (Figs. 1-4) discloses that it is known in the art to provide a flange 54 that extends along most of the perimeter of the cross member 20, including along the entire central portion 52 of the cross member (Fig. 4). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the mid portion of the cross member of Viduya with the flange of Huang, in order to help rigidify and strengthen the center structure. As a result, the flange would extend along the entire perimeter of the center structure 16 of Viduya and each of said flanges 28 of the first and second ends of the center structure 16 would form part of a single, continuous flange that extends along the entire perimeter of the center structure.

Allowable Subject Matter

22. Claims 27, 31, 34, and 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the

limitations of the base claim and any intervening claims, and if the drawing objection above has been overcome.

Response to Arguments

23. Applicant's arguments filed 7/1/08 have been fully considered but they are not persuasive.
24. In response to applicant's arguments on pages 10-11 of the "Remarks" regarding examiner's previous rejection of claims 14-20, 25, and 26 (Office Action mailed 4/2/08) under 35 USC 112, second paragraph, as being indefinite on the grounds that the recitation "by a method other than casting" in claims 14 and 20 is "unclear because the claims are claiming what the invention is not, rather than what the invention is", examiner has withdrawn this rejection. However, examiner notes that the recitation "by a method other than casting" is interpreted as only "stamping" as "stamping" is the only method disclosed in applicant's specification.
25. Applicant argues on page 11 of the "Remarks", "In contrast, Viduya's "spacers 32" (identified by the Office Action as the recited castings/cast structures) do not have a "respective integral attachment structure for attaching a respective motor vehicle element associated with a respective wheel of a motor vehicle," as recited in independent claims 1, 11, 14, and 20".

Examiner disagrees. In the broadest reasonable interpretation of the claims, it is the examiner's position that Viduya's "spacers 32" (identified by the Office Action as the recited castings/cast structures) do have a "respective integral attachment structure

(see attachment holes annotated in Fig. 2 of Viduya attached) for attaching a respective motor vehicle element 12a, 12b **associated** with a respective wheel of a motor vehicle," as broadly recited in independent claims 1, 11, 14, and 20.

26. Applicant argues on pages 12-13 of the "Remarks", "Applicants also traverse the Office Action's assertion that the recitation "non-cast" has not been given patentable weight" because "the method of forming the device is not germane to the issue of patentability of the device itself ... Consequently, the recitation "non-cast" must "be considered when assessing the patentability of product-by-process claims over the prior art" ... Applicant similarly specifically traverses the Office Action's failure to give the recitation "castings" patentable weight for the same reasons as discussed above with respect to the "non-cast" recitation".

However, examiner disagrees because applicant has not defined any distinctive structural characteristics of the center structure as a result of the center structure being formed by a method other than casting. From an outward appearance, a cast center structure and non-cast center structure are structurally the same. Therefore, it is the examiner's position that applicant has not "structurally" defined the invention over the prior art.

Further, while examiner noted that the recitation "castings" does not serve to distinguish in an apparatus claim, examiner further made a 103(a) rejection that it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the members 32, 32 by casting as castings are extremely old and well

known in the art. Accordingly, examiner maintains that the 103 rejection above is proper.

27. Applicant argues on page 13 of the "Remarks", "Claims 10 and 13 ... Specifically, there is no motivation, suggestion, or other reason that would have made the proposed combination obvious ... While adding a cover would close the center structure in Viduya, doing so was non-obvious ... Because Viduya's structure 16 does not house such a steering assembly, there was no obvious reason to add such an apparently superfluous cover to Viduya's structure 16".

Examiner disagrees. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, while Viduya's structure 16 does not house such a steering assembly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the center structure of Viduya with the cover 170 of Dostert, in order to close the U-shaped cross-section of the center structure. Examiner notes that in closing the U-shaped cross-section of the center structure, the cover would prevent the underside of the U-shaped cross-section from collecting excessive dirt, debris, and/or ice and protect any vehicle components mounted therein. Further, examiner notes that KSR forecloses

the argument that a **specific** teaching, suggestion, or motivation is required to support a finding of obviousness. See the recent Board decision *Ex parte Smith*, --USPQ2d--, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007) (citing *KSR*, 82 USPQ2d at 1396).

Conclusion

28. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSELYNN Y. SLITERIS whose telephone number is (571)272-6675. The examiner can normally be reached on Monday, Tuesday & Thursday 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Q. Nguyen can be reached on 571-272-6952. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joselynn Y. Sliteris/
Examiner, Art Unit 3616
10/29/08

/Paul N. Dickson/
Supervisory Patent Examiner, Art Unit 3600